



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI- 04-3\*

### QUESTION:

May you, an employee of a housing authority who has responsibility for administering housing authority rental programs, have a financial interest in a contract to purchase a housing unit from the housing authority without violating G. L. c. 268A, § 20?

### ANSWER:

Yes. Section 20 of G. L. c. 268A does not prohibit you from having this financial interest in a contract with your own municipal agency because you qualify for the exemption under § 20(g) as a result of the limited nature of your responsibilities for the Authority.

### FACTS:

You are a full-time employee of a Housing Authority (Authority), where you have been working for approximately seven years. You [work under the supervision of the Authority's Housing Opportunities Coordinator and] are responsible for receiving and processing [all] applications for public rental housing. All of your Authority duties involve rental housing.

You work with families and/or individuals who are seeking public rental housing. You select them from the Authority's waiting list, review their applications, send correspondence to them about housing units, and review financial information to ensure that it is current and that they meet program eligibility requirements. In addition, you interview people on the waiting list and show them housing units. Subsequently, you prepare the lease and calculate the rent.

You also perform similar tasks with respect to applicants for the Section 8 Voucher Program (Section 8), except that you do not prepare the lease because Section 8 subsidizes private rental housing.

Finally, you review applications for people wanting to get on a waiting list for rental housing. You determine where the family or individual should be placed on the appropriate waiting list. If an applicant does not qualify for public rental housing, then you would notify the applicant and hold a conference, if the applicant so desired, to discuss eligibility.

You entered into a Purchase and Sale Agreement with the Authority (Contract) to purchase land and improvements to be developed as a housing unit (Unit).

By way of background, the Authority received a \$15 million grant to demolish and develop a site in the City. The site is part of a larger undertaking consisting of the redevelopment of the site and the surrounding neighborhood (collectively, the "Project"). As part of the Project, the Authority is constructing homeownership units on the site, rental units on the site, additional rental units on scattered sites within the neighborhood, and additional homeownership units on scattered locations in the neighborhood. The Project targets low and moderate income residents.

The Unit is part of the homeownership units that the Authority is developing on the site, through a contract with a developer. A multitude of funding sources is being used to develop these units and make them affordable to first-time homebuyers. The funding sources are: the United States Department of Housing and Urban Development through HOPE (Homeownership and Opportunity for People Everywhere) VI funds; the Commonwealth's HOME<sup>1</sup> monies and the Affordable Housing Trust Fund through the Department of Housing and Community Development (DHCD); and Affordable Housing Program Funds made available through the Federal Home Loan Bank.

The Contract includes the following entitled documents, "City Housing Authority Rider (Units)" and a "Deed Rider (Single-Family)(Resale/Recapture) (Master Rider for DHCD, HHA and AHT)" (collectively, Riders). The Riders will be part of the deed from the Authority to you. The purchase price is \$108,000.

The Riders include, among other restrictions, a resale price restriction, a right of first refusal for the Authority to purchase the property, and requirements to repay the Authority certain amounts of money if the property is sold or transferred within ten years.<sup>2</sup> In addition, the deed will be subject to "easements, restrictions and reservations of record, including, without limitation: (i) that certain Amended and Restated Master Declaration of Covenants, Conditions and Restrictions, executed by [the Authority] as Declarant," recorded with the Registry of Deeds. The Contract also contains a non-recourse provision, limiting the Authority's liability, that expressly survives termination of the Contract and remains in full force and effect after delivery of the deed to you.

With respect to the Unit, the Master Rider includes the following background in its recitals. DHCD provided financing to the Authority in connection with the acquisition of the property and the construction of the dwelling and to reduce the purchase price by that amount. The Authority provided financial assistance as part of the Authority's acquisition of the underlying real estate and construction of the dwelling. Finally, DHCD, under the Affordable Housing Trust Fund Statute, G. L. c. 121D, (administered by the Massachusetts Housing Finance Agency), has provided financing to the Authority for acquisition and construction, also to reduce the unit's purchase price in the same amount. These amounts are referred to collectively as the "Assistance Amount" and this Rider states that as a result of the Assistance Amount, the Authority is conveying the Unit to you at a consideration that may be less than the fair market value.<sup>3</sup>

In order to be eligible to enter into the Contract, you completed the "Pre Application First Time Homebuyer Program Housing Authority" which required you to provide a typical array of credit-related documents, such as bank account statements and payroll stubs. You also completed the Authority's "Borrowers Assistance Program Application," which required you to provide similar documentation including federal income tax returns and a credit report. (We will refer collectively to both of these programs as the "Programs"). You state that you will receive funds for closing costs under the Borrowers Assistance Program (BAP).

The Authority provided a letter to the City's Office for Community Development (OCD) dated November 7, 2003, stating that you had applied for assistance under the BAP. The letter states:

Upon review of the BAP application it was found, that except for being employed by the Authority, that you would be eligible to receive assistance under the program. Based on this fact the Authority is requesting an exemption for this application based on the conflict of interest rule. Enclosed with this letter please find a copy of the Notice of Disclosure that has been posted at the office of the Authority . . . . I am requesting that this copy be posted at an appropriate place in your offices or City Hall.

According to the Notice of Disclosure, you applied for down payment and closing cost assistance under the BAP with the Authority. The Notice of Disclosure also states that the Authority administers the BAP under contract with the OCD (BAP Contract). The OCD administers HOME funds from the United States Department of Housing and Urban Development and BAP is an activity using HOME funds. This Disclosure also states that if you were not an Authority employee, you would be entitled, without disclosure, to apply for and receive BAP funds.

The City Solicitor issued the following opinion (Opinion) on your behalf:

The [City's] Office of Community Development (OCD) has requested an opinion from this office relative to allowing an employee to take advantage of the Buyer Assistance Program (BAP).<sup>4</sup> Your role within the office does not have any involvement or authority in the selection process or in the granting of CDBG funds [Community Development Block Grant].<sup>5</sup> In my opinion there would be no conflict of interest in allowing you to participate in the buyer assistance program.

OCD has stated that were you not an employee you would be an eligible candidate for this program.

Finally, as the sale of any property using BAP funds will be publicly disclosed at a public meeting, your situation falls within the exceptions to the Conflict of Interest rules set forth in 24 CFR 570.611, and does not violate any state or local laws in doing so.

The Opinion does not mention G. L. c. 268A, § 20 and does not indicate whether the City Solicitor considered the application of § 20 to your circumstances.<sup>6</sup> The City Solicitor did not forward the Opinion to the Ethics Commission for review.

The Code of Federal Regulations, 24 CFR 570.611 (Regulation) cited in the Opinion, imposes conflict of interest restrictions on employees of agencies, such as the Authority, that receive Community Development Block Grants (CDBG) under the federal Department of Housing and Urban Development (HUD). The Regulation states that **no** such employees

who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefits from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity . . . during their tenure or for one year thereafter.<sup>7</sup>

The Regulation, however, also contains a provision by which HUD may grant an exception on a “case-by-case basis” if several requirements are met. There are two threshold requirements. The first is a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made.<sup>8</sup> The Notice of Disclosure the Authority posted was intended to comply with that requirement. The second threshold requirement is HUD’s receipt of “an opinion of the recipient’s attorney that the interest for which the exception is sought would not violate State or local law.”<sup>9</sup> The Regulation also lists several factors to be considered when granting an exception, including “whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question.”<sup>10</sup>

It is our understanding that through your work on the Authority you have no role in the Programs or in any of the Authority’s activities related to the sale of the homeownership units on the site. As described above, you are responsible for administering rental programs for the Authority and are not involved in the Authority’s home ownership programs. You do not, as a Tenant Services Advisor, have any supervisory role over personnel who administer the Authority’s homeownership programs.

You contacted the Ethics Commission. The Legal Division of the Ethics Commission issued an informal advisory letter informing you that G. L. c. 268A, § 20 would prohibit you from closing on the purchase of the unit because you did not qualify for any of the § 20 exemptions. As a result, you have asked for a formal opinion from the Commission.

## DISCUSSION:

For purposes of the conflict of interest law, you are a municipal employee.<sup>11</sup> Under G. L. c. 268A, § 20, a municipal employee may not have “a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city . . . , in which the city . . . is an interested party of which he has knowledge or has reason to know.”<sup>12</sup> Thus, the law prohibits a municipal employee from having, in addition to her municipal employee position, a financial interest in another contract with her municipality, unless she qualifies for an exemption.<sup>13</sup> The Authority is a municipal agency of the City for purposes of the conflict of interest law.<sup>14</sup> The Contract is a contract made by the Authority. As the purchaser of the Unit under the Contract, you have a financial interest in a contract made by a municipal agency of the City, in addition to your position as an Authority employee. Moreover, if you close on the purchase of the Unit,<sup>15</sup> you will continue to have a financial interest in a contract with the Authority as a result of the contractual obligations under the Riders. The Unit deed and its accompanying Riders form a contract that binds you as a Unit owner for at least 30 years.<sup>16</sup> In addition, the BAP is administered under a contract between the Authority and the City’s OCD (BAP Contract). Because funds pursuant to that contract will offset your closing costs, you also have a financial interest in the BAP Contract. However, as discussed further below, the BAP Contract is part of the Authority’s housing subsidy programs,<sup>17</sup> just as the Contract you entered into to purchase the Unit from the Authority is part of a housing subsidy program.

As we have often reminded municipal employees, “this section is intended to prevent a municipal employee from influencing the awarding of contracts by any municipal agency in a way which might be beneficial to the employee” and it is intended “to avoid the perception” of having an “inside track.”<sup>18</sup> These concerns are amplified when a municipal employee enters into an additional contract with her own municipal agency.

There is only one potentially applicable exemption to consider. Under G. L. c. 268A, § 20(g), the general § 20 prohibition “shall not apply . . . to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority, *unless* the employee is employed by the local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.”<sup>19</sup>

### *“Housing subsidy program”*

The first issue is whether the Programs are “housing subsidy program[s].” The phrase “housing subsidy program,” is not defined in G. L. c. 268A. Accordingly, we look to commonly accepted meanings.<sup>20</sup> The word “subsidy” is commonly defined as “a grant of funds or property from a government (as of the state or a municipal corporation) to a private person or company to assist in the establishment or support of an enterprise deemed advantageous to the public.”<sup>21</sup> For example, under G. L. c. 40B, “low or moderate income housing” is defined as “any housing *subsidized* by the federal or state

government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute.”<sup>22</sup>

The statute enumerating the powers of a local housing authority, G. L. c. 121B, § 26, uses “housing subsidy program” in § 26(m), which empowers a housing authority to develop low and moderate income housing “undertaken or assisted pursuant to federal legislation” and to finance loans for construction or rehabilitation of such housing.<sup>23</sup>

Further, the Massachusetts Housing Partnership Fund was created to provide programs to: produce housing for low and moderate income households; “broaden opportunities for homeownership for low and moderate income persons and families;” and reclaim abandoned property for housing use.<sup>24</sup> These programs may include contracts, grants, loans for writing down the cost of homeownership, or front-end costs associated with reclaiming abandoned property.<sup>25</sup>

Here, funds from the Authority, DHCD, the Affordable Housing Trust Fund, and CDBG subsidize the Programs by offsetting construction and acquisition costs, lowering the price at which your unit would otherwise be sold in the City housing market, and providing funds (under the BAP Contract) for your closing costs. Considering the commonly understood meaning of “housing subsidy program” as that phrase appears in the various contexts described above, we conclude that the Legislature intended the phrase to include not only rental subsidies but also other housing subsidy programs such as programs involving home ownership. The Programs are, therefore, housing subsidy programs contemplated by the § 20(g) exemption.<sup>26/27</sup>

#### *Applied and otherwise eligible*

The next issue is whether you have “applied in the usual course and [are] otherwise eligible for a housing subsidy program administered by” the Authority. Based on the information you have provided, we conclude that you have “applied in the usual course and [are] otherwise eligible” for the Program.<sup>28</sup>

#### *“Responsibility for the administration of such subsidy programs”*

The decisive issue is whether you are “employed by the local housing authority in a capacity in which [you have] responsibility for the administration of such subsidy programs.” Thus, we must consider whether the phrase “such subsidy programs” in § 20(g) refers to the words “a housing subsidy program administered by a local housing authority” or to that phrase plus the immediately preceding phrase “who has applied in the usual course and is otherwise eligible for.” Thus, we ask whether the Legislature meant to disqualify a housing authority employee who has responsibility for administering *any* housing subsidy program or only an employee who has responsibility for administering the specific housing subsidy program to which he has “applied in the usual course and is otherwise eligible.”

We begin this part of our analysis by considering some rules of statutory construction. “[T]he general rule of statutory as well as grammatical construction [is] that a modifying clause refers to the last antecedent unless there is something in the subject matter or in the expression of the dominant purpose that requires a different interpretation. But this is only a rule of construction to ascertain the legislative intent, and is not to be adopted to thwart such an intent if it clearly appears from an examination of the entire statute.”<sup>29</sup> “Such” means “of this or that kind,” “that or those; having just been mentioned.”<sup>30</sup> For the following reasons, we conclude that the phrase “such subsidy programs” refers back to the subsidy programs for which you are eligible and to which you applied.

A plain reading of the language of the exemption leads one to conclude that the Legislature intended to treat housing authority employees who have responsibility for administering housing subsidy programs differently from, not only other municipal employees of the same municipality, but also other employees within the same housing authority. The Legislature intended to allow municipal employees, except those involved in management with the greatest inside power and influence, to have access to housing programs. This exception evidences a weighing of conflict of interest concerns against policies that support affordable housing. By using the word “such” the Legislature narrowed the focus. If it had intended to prohibit someone who had **no** responsibility for the administration of the very program to which she had applied, and was otherwise eligible, it would have been clearer to use the word “any.” Thus, the last clause would have stated, “he has responsibility for the administration of *any* subsidy programs.”

In *EC-COI-92-31*, the Commission concluded, after analyzing language in § 20(h) similar to language in § 20(g),<sup>31</sup> that a housing authority’s “leased housing inspector” did not have responsibility for administering the leased housing subsidy program. As an inspector, he inspected apartments in the leased housing rental assistance program on an annual basis to ensure building and sanitary code compliance. The Commission stated:

We recognize that you do in fact play a role in the subsidy program. Nevertheless, we believe that the exemption was not designed to exclude all employees who have very limited participation in the authority’s subsidy programs. Rather, we conclude that a housing authority employee would have to be in a position to make or influence determinations regarding an individual’s receipt of a rental subsidy in order to have responsibility for the program.

The Commission also commented in *EC-COI-92-31* that in 1985 it proposed a bill that “set forth an exemption allowing a municipal employee to receive housing assistance payments on behalf of an eligible tenant, provided that the municipal employee did not participate in or have official responsibility for the activities of the local housing authority. This exemption, which would have effectively barred most housing authority employees from renting property to subsidy recipients, was not enacted by the Legislature.” Instead, in 1987, the Legislature enacted § 20(h). This “appears to expand the

availability of the exemption because only those housing authority employees who have 'responsibility for the administration' of *the* subsidy program are now restricted from receiving subsidized rental payments."<sup>32</sup> Thus, the Commission concluded in *EC-COI-92-31* that there are "only . . . relatively narrow circumstances" in which the exemption is not applicable.<sup>33</sup>

Considering that background, there is an implication that the Commission, at that time, believed that § 20(h) would be available to any municipal employee except those housing authority employees who administer the very program to which they applied. Thus the phrase "such subsidy programs" in § 20(h) was interpreted to refer not to *all* subsidy programs but only to the subsidy programs that the employee administers.<sup>34</sup>

On these particular facts, there is a distinction between the housing subsidy programs you administer and the programs to which you applied for your personal benefit. There is a clear distinction between homeownership and leasing. Your work in administering the rental subsidies is unrelated to the homeownership subsidy programs to which you applied.

We also find support from the federal Regulation, which addresses similar conflict of interest issues under federal law and provides exceptions to the general prohibition. One of the factors to be considered for an exception under the Regulation is "whether the . . . person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the *specific activity* in question."<sup>35</sup> In your particular circumstances, you are not part of the decision-making process for any aspects of the Authority's homeownership programs.

Accordingly, we interpret the phrase "such subsidy programs" in § 20(g) to refer to the entire prior phrase: "to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority," rather than to all housing subsidy programs administered in different parts of the authority.

## **CONCLUSION:**

Applying our interpretation to your circumstances, we conclude that you do not have responsibility for the administration of the homeownership housing subsidy programs to which you have applied and are otherwise eligible. Your responsibility includes only rental housing subsidy programs.

Under G. L. c. 268A, § 20(g), you are not prohibited from having a financial interest in the Contract and the BAP Contract. As a result, you may close on the purchase of Unit, and own and occupy the unit.<sup>36</sup>

**DATE AUTHORIZED: May 12, 2004**



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\*All identifying information has been deleted from this opinion as required by Chapter 268B, section 3(g).

<sup>1</sup> “HOME” is not an acronym. “HOME” is defined in the DHCD 2003 Program Book as a “federal low income housing production, rehabilitation, rental assistance and homeownership program.”

<sup>2</sup> The Rider for the Units requires: (1) the maximum resale price shall be the lesser of the Grantee's (your) purchase price as adjusted for inflation based on the change in the Consumer Price Index during your ownership or the fair market value of the property; (2) you shall maintain the property as your primary residence and shall not lease or abandon the property. During your ownership, you must certify to the Authority in writing on an annual basis that you have maintained the property as your primary residence; (3) except for liens incurred as result of your financing the purchase, you shall not allow any mortgages or other liens without the Authority's prior written consent; (4) you shall provide the Authority a right of first refusal to purchase the property if you intend to sell or transfer it. If you sell or transfer the property within a ten (10) year period you must : (a) pay the Authority the lesser of \$71,907.00 (which is the difference between the development cost of the property and the original sale price to you) reduced at a rate of 10% per year **or** 50% of the Net Proceeds. “Net Proceeds is defined as the resale price minus: (1) the amount needed to discharge your acquisition mortgage and any other liens; (2) your down payment for the property; (3) the amount of your acquisition and resale closing costs, including commissions; (4) the amount of principal payments made by you on your primary mortgage on the property; and (5) the cost of any documented capital improvements made by you to the property and approved by the Authority at the time of resale.

<sup>3</sup> This Rider states, “In consideration of the granting of such financial assistance, DHCD, [Authority] and AHTF have required that Grantor impose a deed restriction on Grantee and any successor owner of the Property . . . providing for recapture of some or all of the financial subsidy and resale to an eligible family in certain circumstances.” This Rider also includes a Right of Refusal/Recapture provision that obligates you to notify DHCD, [Authority], and AHTF in writing if you wish to sell the property at any time within thirty (30) years.

<sup>4</sup> It is our understanding that the phrase “Buyer Assistance Program” was meant to be “Borrowers Assistance Program,” as the Authority had described it above.

<sup>5</sup> It is our understanding that the funds you will receive under the BAP are derived from federal CDBG funds.

<sup>6</sup> In addition, Fleet Bank pre-approved you “for the purchase of a single family home with a sales price of \$110,000.” You received a final mortgage loan commitment from Fleet. You state that you met all the income requirements the Authority has imposed and complied with the same application and qualifications processes any member of the public must follow. This loan from Fleet is not part of any Authority program.

<sup>7</sup> 24 CFR 570.611(b).

<sup>8</sup> 24 CFR 570.611(d)(1)(i).

<sup>9</sup> 24 CFR 570.611(d)(1)(ii).

<sup>10</sup> 24 CFR 570.611(d)(1)(iv).

<sup>11</sup> “Municipal employee, a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis . . . .” G. L. c. 268A, § 1(g).

<sup>12</sup> G. L. c. 268A, § 20(a).

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<sup>13</sup> See e.g., *EC-COI-83-83* (this section contemplates an additional contract over and above the employee's original contract of employment).

<sup>14</sup> G. L. c. 121B, § 7 ("For the purposes of chapter two hundred and sixty-eight A . . . , each housing and redevelopment authority shall be considered a municipal agency . . . ."); "Municipal agency, any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder." G. L. c. 268A, § 1(f).

<sup>15</sup> See e.g., *Commonwealth v. Nugent*, \_\_\_ Mass. App. Ct. \_\_\_ (No. 02-P-1095, April 30, 2004) (defendant conceded at trial and on appeal that the purchase of a parcel from a municipality created a financial interest in a contract for purposes of G. L. c. 268A, § 20).

<sup>16</sup> See note 3 *supra*.

<sup>17</sup> See e.g., *EC-COI-95-9*. In addition, the grant to you of funds from the BAP Contract for closing costs is also a contract, which is part of the Programs.

<sup>18</sup> *EC-COI-99-2*; See also *Quinn v. State Ethics Commission*, 401 Mass. 210, 214, 221 (1987).

<sup>19</sup> Emphasis added.

<sup>20</sup> *Int'l Organization of Masters, etc. v. Woods Hole, Martha's Vineyard & Nantucket Steamship Authority*, 392 Mass. 811, 813 (1984); *EC-COI-03-2*.

<sup>21</sup> *Webster's Third New International Dictionary* (1993).

<sup>22</sup> G. L. c. 40B, § 20 (emphasis added). See also 760 CMR 20.05 ("HOP Developments shall include a mix of HOP Units and Market Units in a manner that is appropriate to ensure the economic and programmatic feasibility of the particular project. However, at least 25% of the total number of units available shall be HOP Units (30% if the development involves a comprehensive permit). In order to ensure the long term affordability of HOP units, their re-sale shall be governed by Re-sale Controls which shall usually be contained in the deed or a rider to the deed of the HOP Unit. All HOP Units shall be counted as **subsidized** for the purpose of demonstrating compliance with the requirements of M.G.L. c. 40B.") (emphasis added).

<sup>23</sup> G. L. c. 121B, § 26, as amended by St. 1984, c. 233, § 36.

<sup>24</sup> St. 1985, c. 405, § 35.

<sup>25</sup> *Id.* Pursuant to St. 1985, c. 405, § 35, implementing regulations, (760 CMR 20.00 et. seq. for the Homeownership Opportunities Program (HOP)), were promulgated. "The primary goal of HOP is to encourage communities to identify their housing needs and take specific steps to develop the types of housing that are appropriate to meet those needs. HOP, therefore, has been designed to give priority consideration to applications that are submitted as collaborative efforts between communities and proposed developers." 760 CMR 20.04.

<sup>26</sup> See e.g., *Green v. Wyman-Gordon, Co.*, 422 Mass. 551, 554 (1996) (statutes should be construed to be consistent with one another, assuming that the legislature was aware of existing statutes when enacting subsequent ones).

<sup>27</sup> If "housing subsidy program" did not include the Programs, then you would **not** qualify for § 20(g) and you would be prohibited from continuing to have a financial interest in the Contract.

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<sup>28</sup> Nothing that has been made available for our consideration suggests that the Authority deviated from the normal application processes to provide you any unwarranted advantage in qualifying for the Program or that you, as an Authority employee, participated in the process. See G. L. c. 268A, §§ 23, 19.

<sup>29</sup> *Selectmen of Topsfield v. State Racing Commission*, 324 Mass. 309, 312 (1949) (citations omitted). “According to those rules of construction a proviso or an exception is also presumed to be confined to the last antecedent.” *Young’s Court, Inc. v. Outdoor Advertising Board*, 4 Mass. App. Ct. 130, 133 (1976).

<sup>30</sup> *Black’s Law Dictionary* (7<sup>th</sup> ed.); *In re West*, 313 Mass. 146, 149 (1943) (in the phrase, “the employment of any minor, known to be such,” the clause “known to be such” modifies the word “minor.”)

<sup>31</sup> “to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving *a rental subsidy administered by a local housing authority*, unless such employee is *employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs*.” G. L. c. 268A, § 20(h).

<sup>32</sup> Emphasis added.

<sup>33</sup> Given that the Legislature considered and rejected the Commission’s proposal in 1985 that ultimately led to the enactment of § 20(h), we may also infer that the Legislature was aware of the Commission’s § 20(h) proposal, which would have made the exemption available to fewer municipal employees, when considering the enactment of § 20(g) under St. 1985, c. 415.

<sup>34</sup> By using the plural, the Legislature contemplated that there may be more than one “housing subsidy program” administered by local housing authorities. In your circumstances, there are more than one “program” to which you applied, the BAP and the First Time Homebuyer Program, which support home ownership instead of leasing. The facts of the Project show that there are more than one housing subsidy program the Authority administers, not only the programs (to which you applied for homeownership) but also programs for rental units. We note that housing authorities administer other housing subsidy programs, and, as discussed above, the Legislature was aware of the existence of different types of housing subsidy programs when § 20(g) was enacted. See e.g., *EC-COI-96-4* (Massachusetts Rental Voucher Program, which replaced the “Chapter 707 Program,” Section 8 Rental Certificate Program and Rental Voucher Program under federal HUD regulation); *EC-COI-92-35* (Section 8 and Chapter 707 programs); *EC-COI-92-31* (a municipal housing authority’s leased housing subsidy program).

<sup>35</sup> 24 CFR 570.611(d)(2)(iv) (emphasis added).

<sup>36</sup> You must continue to comply with G. L. c. 268A, §§ 19 and 23 if you are ever in a position as an Authority employee to participate in a particular matter, or use your official position, to affect your continuing interests in your Unit through the various contractual provisions to which you are subject as the Unit owner.